

**[DRAFT - August 31, 2004]**

## **CHAPTER 40**

### **POLICY REGULATION FOR NUTRIENT ENRICHED WATERS AND DISCHARGERS WITHIN THE CHESAPEAKE BAY WATERSHED**

#### **9VAC25-40-10. Purpose.**

This ~~policy regulation~~ provides for the control of dischargers of nutrients from point sources affecting state waters that ~~have been~~ are designated "nutrient enriched waters" in 9VAC25-260-350 or are located within the Chesapeake Bay Watershed, which consists of the following Virginia river basins: Potomac River Basin (9VAC 25-260-390 and 9VAC 25-260-400); James River Basin (9VAC 25-260-410, 9VAC 25-260-415, 9VAC 25-260-420, and 9VAC 25-260-430); Rappahannock River Basin (9 VAC 25-260-440), Chesapeake Bay and small coastal basins (9VAC 25-260-520, Sections 2 through 3g); and, the York River Basin (9VAC 25-260-530).

The provisions of this Chapter and the Water Quality Management Planning Regulation (9VAC25-720) constitute the nutrient reduction requirements for point source discharges in the Chesapeake Bay watershed to protect the Chesapeake Bay and its tidal rivers.

#### **9VAC25-40-20. Authority Repealed**

~~The board has adopted this policy under the authority of §§62.1-44.15(3), 62.1-44.15(10) and 62.1-44.15(14) of the Code of Virginia.~~

#### **9VAC25-40-30. Strategy for "nutrient enriched waters" Outside of Chesapeake Bay Watershed**

~~As specified here, the board shall reopen the NPDES permits of certain point source dischargers to "nutrient enriched waters" and shall impose effluent limitations on nutrients in the discharges authorized by those permits and certain new permits.~~

A. All dischargers authorized by ~~NPDES~~ VPDES permits issued ~~on or before July 1, 1988,~~ to discharge 1.0 MGD or more to "nutrient enriched waters" shall ~~be required to~~ meet a monthly average total phosphorus effluent limitation of 2.0 mg/l, ~~as quickly as possible and in any event within three years following modification of the NPDES permit.~~

~~At the time of modification of the NPDES permit, any discharger who voluntarily accepts a permit to require installation and operation of nitrogen removal facilities to meet a monthly average total nitrogen effluent limitation of 10 mg/l for the months of April through October shall be allowed an additional year to meet the phosphorus effluent limitation in 9VAC25-40-30 A.~~

B. ~~All new source~~ New dischargers as defined in ~~9VAC25-30-10-9VAC25-31-10~~ with a permit issued which commence discharging after July 1, 1988, and are authorized by VPDES permits to

~~discharge a design flow greater than or equal to 0.050 MGD or more who propose to discharge to "nutrient enriched waters" shall be required to meet a monthly average total phosphorus effluent limitation of 2.0 mg/1.~~

~~C. This policy regulation shall not be construed to relax any effluent limitation concerning a nutrient that is imposed under any other requirement of state or federal law. No time extensions outlined in 9VAC25-40-30 A for installation and operation of nitrogen removal facilities shall be granted to a discharger if such an effluent limitation or a time extension is already imposed under any other requirement of state or federal law or regulation.~~

D. Any discharger to "nutrient enriched waters" that is located within the Chesapeake Bay Watershed is not subject to the requirements of this Section.

#### **9VAC25-40-40. Permit amendments.**

Whenever the board determines that a permittee has the potential for discharging monthly average total phosphorus concentrations greater than or equal to 2.0 mg/1 or monthly average total nitrogen concentrations greater than or equal to ~~40~~  $1.0 \times 10^1$  mg/1 to "nutrient enriched waters," the board may reopen the ~~NPDES~~ VPDES permit to impose monitoring requirements for nutrients in the discharge.

#### **9VAC25-40-50. Possibility of further limitations.**

The board anticipates that, following implementation of the foregoing requirements and evaluation of effects of this ~~policy regulation~~ and of the results of the nonpoint source control programs, further limitations on discharges of phosphorus or of other nutrients may be necessary to control undesirable growths of aquatic plants.

#### **9VAC25-40-60. Other state petitions.**

The board may entertain petitions from adjoining states to consider rulemakings to control nutrients entering tributaries to "nutrient enriched waters" of the adjoining state.

#### **9VAC25-40-70. Strategy for Chesapeake Bay Watershed**

A. It shall be the policy of the board that point source dischargers within the Chesapeake Bay Watershed utilize biological nutrient removal technology or its equivalent whenever feasible, as provided by 9VAC25-40-70.B. For the purposes of this Chapter, and the related sections of 9VAC25- 720, the terms "point source dischargers" or "dischargers" do not include permitted discharges of non-contact cooling water or storm water.

B. As specified herein, the board shall issue and reissue the VPDES permits of certain point source dischargers within the Chesapeake Bay Watershed and shall impose effluent concentration limitations on nutrients in the discharges authorized by those permits.

1. Except as provided under 9VAC25-40-70.B.4, all significant dischargers, as defined in 9VAC25-720, authorized by VPDES permits issued on or before the effective date of this Chapter

shall achieve an annual average total nitrogen effluent limitation of not more than 8.0 mg/l and an annual average total phosphorus effluent limitation of not more than 1.0 mg/l, provided, however, these dischargers must achieve an annual total nitrogen waste load allocation and an annual total phosphorus waste load allocation as required by the Water Quality Management Planning Regulation (9VAC25-720). The applicable limitations shall be achieved within four years following reissuance or major modification of the VPDES permit, but in no case later than December 31, 2010.

2. Except as provided under 9VAC25-40-70.B.4, all dischargers that do not meet the definition of a significant discharger and are authorized by VPDES permits issued on or before July 1, 2004 to discharge 0.040 MGD or more shall be required to achieve an annual average total nitrogen effluent limitation of 8.0 mg/l and an annual average total phosphorus effluent limitation of 1.0 mg/l. These limitations shall be included in reissued or modified permits after December 31, 2010 and shall be achieved within four years following reissuance or major modification of the VPDES permits.

3. Except as provided under 9VAC25-40-70.B.4, all new dischargers or expanded discharges of nitrogen or phosphorus authorized by VPDES permits issued after the effective date of this Chapter to discharge 0.040 MGD or more shall achieve an annual average total nitrogen effluent limitation of 3.0 mg/l and an annual average total phosphorus effluent limitation of 0.30 mg/l.

4. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board through treatability, engineering, or other studies that biological nutrient removal technology or its equivalent at a point source discharge cannot achieve the effluent limitations of 9VAC25-40-70.B.1, 2 or 3, as applicable. In these cases, the board shall require alternative effluent limitations the board deems appropriate for that discharger, provided, however, the discharger must achieve an annual total nitrogen waste load allocation and an annual total phosphorus waste load allocation as required by the Water Quality Management Planning Regulation (9VAC25-720).

5. Any effluent limitation concerning a nutrient that is imposed under any other requirement of state or federal law or regulation that is more stringent than those established herein, shall not be affected by this regulation.

C. Notwithstanding the above, point source dischargers within the Chesapeake Bay Watershed are also governed by the Water Quality Management Planning Regulation (9VAC25-720).

---

**Statutory Authority**

§ 62.1-44.15(10) of the Code of Virginia

**Historical Notes**

Derived from §6; eff. May 25, 1988